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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,404	08/07/2001	Colin Oloman	6510-PA04D	6879
27111	7590	11/07/2005	EXAMINER	
GORDON & REES LLP 101 WEST BROADWAY SUITE 1600 SAN DIEGO, CA 92101			ZHENG, LOIS L	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,404

Applicant(s)

OLOMAN ET AL.

Examiner

Lois Zheng

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/353,245.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. The indicated allowability of claim 37 is withdrawn in view of the newly discovered reference(s) to Oloman et al. US 5,968,325(Oloman). Rejections based on the newly cited reference(s) follow.

Claim 37 remains under examination.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the opening on the rigid outer wall as disclosed in instant claim 37 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The substitute specification filed 19 August has been entered.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 37 is rejected under 35 U.S.C. 102(e) as being anticipated by Oloman et al. US 5,968,325(Oloman).

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Oloman teaches an electrolytic cell assembly comprising a rigid outer wall(Figs. 4-6, numeral 54) housing an electrolytic cell((Figs. 4-6). The electrolytic cell as taught

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by Oloman further comprises an anode(Figs. 4-6, numeral 36), a cathode(Figs. 4-6, numeral 46) spaced apart from the anode and an electrolyte(Figs. 4-6, numeral 42) in electrical contact with the anode and the cathode.

Oloman further teaches that the electrolytic cell comprises a non-conductive plastic thin tube wall(Figs. 4-6, numeral 44, col. 3 lines 34-37, col. 5 lines 66-67) containing the electrolyte and the electrolytic cell is biased against the rigid outer wall by a spring(Figs. 4-6, numeral 56). Since Oloman teaches that the spring member compresses the electrolysis cell and the electrolyte containing thin tube wall of the electrolysis cell is plastic, one skilled artisan would have found that the electrolyte containing plastic thin tube wall is inherently flexible as claimed in order to withstand the compression from the spring.

Oloman further teaches that the anode and cathode of the electrolysis cell are porous(col. 2 line 61-col. 3 line 14). When more than one electrolysis cells are implemented, graphite felts(Figs. 4-6, numeral 48)(i.e. porous) are used in between the electrolysis cells. Therefore, the electrolysis cell of Oloman is porous to permit passage of the gas as claimed.

Even though Oloman does not explicitly teach the claimed rigid outer wall having an opening to permit passage of gas, one skilled artisan would have found that claimed opening is inherently present on the rigid outer wall of Oloman's electrolysis cell assembly since the electrolysis cell of Oloman is used to generate hydrogen(abstract) and the outer wall of Oloman's electrolysis cell assembly must have inherently have a opening in order for the produced hydrogen gas to be collected.

Therefore, Oloman anticipates the instant invention.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 37 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15-16 of U.S. Patent No. 5,968,325. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of U.S. Patent No. 5,968,325(Oloman) teaches an electrolysis apparatus comprising a porous cathode(i.e. porous electrolysis cell), an anode, and an electrolyte container holding electrolyte and a biasing member(i.e. spring) coupled to the outer housing(i.e. outer wall).

Even though claim 1 of Oloman does not explicitly teach that the electrolyte container is flexible, one of ordinary skill in the art would have found the claimed flexible wall of the electrolyte container obvious since the electrolyte container is inherently capable of withstand the compression from the biasing member(i.e. spring).

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In addition, even though Oloman does not explicitly teach the claimed rigid outer wall having an opening to permit passage of gas, one skilled artisan would have found that claimed opening is inherently present on the rigid outer housing of Oloman's electrolysis apparatus since the electrolysis cell of Oloman is used to generate hydrogen(claim 1) and the outer housing of Oloman's electrolysis apparatus must have inherently have a opening in order for the produced hydrogen gas to be collected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lois Zheng whose telephone number is (571) 272-1248. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LLZ

ROY KING
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1742